



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 21, 1996

Ms. Gail Fenter  
Assistant City Attorney  
City of Midland  
P.O. Box 1152  
Midland, Texas 79702-1152

OR96-1902

Dear Ms. Fenter:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 102245.

The City of Midland (the "city"), through its consulting firm, received a request to review certain bid documents prior to the award of a contract for the construction of a new terminal building for Midland International Airport. You claim that the requested information is excepted from disclosure under section 552.104 of the Government Code. You have submitted samples of the requested information. We have considered the exception you claim and reviewed the submitted information.<sup>1</sup>

Section 552.104 excepts information that, if released, would give advantage to a competitor or bidder. The purpose of this exception is to protect the interests of a governmental body in competitive bidding situations. *See* Open Records Decision No. 592 (1991). Section 552.104 is not designed to protect the interests of private parties that submit information to a governmental body. *Id.* at 8-9. This exception protects information from public disclosure if the governmental body demonstrates potential specific harm to its interests in a particular competitive situation. *See* Open Records Decision Nos. 593 (1991) at 2, 463 (1987), 453 (1986) at 3. A general allegation or a remote possibility of an advantage being gained is not enough to invoke the protection of

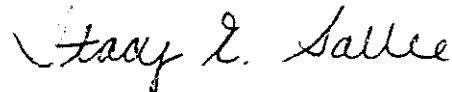
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<sup>1</sup>In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

section 552.104. Open Records Decision Nos. 541 (1990) at 4, 520 (1989) at 4. A general allegation of a remote possibility that some unknown "competitor" might gain some unspecified advantage by disclosure does not trigger section 552.104. Open Records Decision No. 463 (1987) at 2. Furthermore, section 552.104 is inapplicable when the bidding on a contract has been completed and the contract is in effect. *E.g.*, Open Records Decision No. 541 (1990) at 5, 514 (1988) at 2, 319 (1982) at 3. We have reviewed the city's arguments and the submitted documents and conclude that the city may withhold the requested information under section 552.104.<sup>2</sup>

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee  
Assistant Attorney General  
Open Records Division

SES/ch

Ref.: ID# 102245

Enclosures: Submitted documents

cc: Mr. James L. Herndon  
President  
Centfx Construction Company, Inc.  
P.O. Box 299009  
Dallas, Texas 75229-9009  
(w/o enclosures)

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<sup>2</sup>We note that the submitted information may contain trade secrets or confidential commercial or financial information that may be protected from disclosure under section 552.110. However, as the contract has not yet been awarded and we can resolve the pending request under section 552.104, we do not address whether section 552.110 applies to the requested information.